Reg. No. KL/TV(N)/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVI] Trivandrum, Tuesday, 20th January 1981 / 30th Pousha 1902 [No. 53

GOVERNMENT OF KERALA

Law (Legislation-C) Department

NOTIFICATION

No. 17707/Leg. C3/80/Law. *Dated, Trivandrum, 20th January, 1981/ 30th Pousha, 1902.*

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the President on the 17th day of January, 1981.

By order of the Governor,

K. VISWANATHAN NAIR,
Special Secretary (Law).

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1981

33/191/MC.

ACT 9 OF 1981

THE KERALA RELIEF UNDERTAKINGS (SPECIAL PROVISIONS) AMENDMENT ACT, 1980

An Act to amend the Kerala Relief Undertakings (Special Provisions) Act, 1961.

Preamble.—WHEREAS it is expedient to amend the Kerala Relief Undertakings (Special Provisions) Act, 1961, for the purposes hereinafter appearing;

BE it enacted in the Thirty-first Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Relief Undertakings (Special Provisions) Amendment Act, 1980.

(2) It shall be deemed to have come into force on the 21st day of November, 1980.

2. *Amendment of section* 3.—In section 3 of the Kerala Relief Undertakings (Special Provisions) Act, 1961 (6 of 1962) (hereinafter referred to as the principal Act), in sub-section (2), for the words "five years", the words "ten years" shall be substituted.

3. *Amendment of section* 4.—In section 4 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

"(aa) during the period in which the relief undertaking continues as such under sub-section (2) of section 3, any liability of the undertaking to pay tax under the Kerala General Sales Tax Act, 1963 (15 of 1963), incurred before the undertaking was declared a relief undertaking and any remedy for enforcing the payment thereof shall be suspended and all proceedings relating to the levy, assessment, collection and recovery of such tax pending before any court, tribunal, officer or authority shall be stayed;";

(b) in clause (c), for the word, brackets and letter "clause (b)", in both the places where they occur, the words, brackets and letters "clause (aa) or clause (b)" shall be substituted.

4. *Repeal and saving.*—(1) The Kerala Relief Undertakings (Special Provisions) Amendment Ordinance, 1980 (10 of 1980), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

Reg. No. KL/TV(N)/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVI] Trivandrum, Tuesday, 20th January 1981 / 30th Pousha 1902 [No. 54

GOVERNMENT OF KERALA

Law (Legislation-B) Department

NOTIFICATION

No. 19021-Leg. B1/80/Law. *Dated, Trivandrum, 20th January, 1981/ 30th Pousha, 1902.*

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the President on the 17th day of January, 1981.

By order of the Governor,

K. VISWANATHAN NAIR,
Special Secretary (Law).

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1981.

33/192/MC.

ACT 10 OF 1981

THE KERALA MARINE FISHING REGULATION ACT, 1980

An Act to provide for the regulation of fishing by fishing vessels in the sea along the coast line of the State.

Preamble.—WHEREAS it is necessary to provide for the regulation of fishing by fishing vessels in the sea along the coast line of the State;

BE it enacted in the Thirty-first Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Marine Fishing Regulation Act, 1980.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 24th day of November, 1980.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "adjudicating officer" means any officer of the Fisheries Department, not below the rank of an Assistant Director of Fisheries, authorised by the Government, by notification in the Gazette, to exercise the powers conferred on, and discharge the duties imposed upon, the adjudicating officer by this Act for such area as may be specified in the notification;

(b) "Appellate Board" means an Appellate Board constituted under section 10;

(c) "authorised officer" means such officer as the Government may, by notification in the Gazette, authorise in respect of the matter to

which reference is made in the provision of this Act in which the expression occurs;

(d) "fishing vessel" means a ship or boat, whether or not fitted with mechanical means of propulsion, which is engaged in sea-fishing for profit and includes—

(i) a catamaran,

(ii) a country craft, and

(iii) a canoe,

engaged in sea fishing;

(e) "port" means the space within such limits as may from time to time be defined by the Government, by notification in the Gazette, for the purposes of this Act;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "registered fishing vessel" means—

(i) a fishing vessel registered under section 11 of the Marine Products Export Development Authority Act, 1972 (Central Act 13 of 1972); or

(ii) a fishing vessel registered under section 9;

(h) "specified area" means such area in the sea along the entire coast line of the State, but not beyond territorial waters, as may be specified by the Government, by notification in the Gazette;

(i) "State" means the State of Kerala and includes the territorial waters along the entire coast line of that State.

3. *Authorisation of officers for the purposes of any provision of this Act.*—The Government may, by notification in the Gazette, authorise—

(a) any officer of the Government, not being an officer below the rank of a Gazetted officer; or

(b) any officer of the Central Government, not being an officer below the rank of a Gazetted officer or a commissioned officer in the armed forces of the Union, with the consent of that Government,

to exercise the powers conferred on, and discharge the duties imposed upon, an authorised officer under this Act in such area as may be specified in the notification.

CHAPTER II

Regulation of fishing

4. *Power to regulate, restrict or prohibit certain matters within specified area.*—(1) The Government may, having regard to the matters referred to in sub-section (2), by order notified in the Gazette, regulate, restrict or prohibit—

(a) the fishing in any specified area by such class or classes of fishing vessels as may be prescribed; or

(b) the number of fishing vessels which may be used for fishing in any specified area; or

(c) the catching in any specified area of such species of fish and for such period as may be specified in the notification; or

(d) the use of such fishing gear in any specified area as may be prescribed.

(2) In making an order under sub-section (1), the Government shall have regard to the following matters, namely:—

(a) the need to protect the interests of different sections of persons engaged in fishing, particularly those engaged in fishing using traditional fishing craft such as catamaran, country craft or canoe;

(b) the need to conserve fish and to regulate fishing on a scientific basis;

(c) the need to maintain law and order in the sea;

(d) any other matter that may be prescribed.

5. *Prohibition of use of fishing vessel in contravention of any order made under section 4.*—No owner or master of a fishing vessel shall use, or cause or allow to be used, such fishing vessel for fishing in any manner which contravenes an order made under section 4:

Provided that nothing in such order shall be construed as preventing the passage of any fishing vessel from, or to, the shore, through any specified area to, or from, any area other than a specified area for the purpose of fishing in such other area or for any other purpose:

Provided further that the passing of such fishing vessel through any specified area shall not in any manner cause any damage to any fishing nets or tackles belonging to any person who engages in fishing in the specified area by using any traditional fishing craft such as catamaran, country craft, or canoe.

6. *Licensing of fishing vessels.*—(1) The owner of a fishing vessel may make an application to the authorised officer for the grant of a licence for using such fishing vessel for fishing in any specified area.

(2) Every application under sub-section (1) shall be in such form, contain such particulars, and be accompanied by such fees, as may be prescribed.

(3) The authorised officer may, after making such enquiry as he deems fit and having regard to the matters referred to in sub-section (4), either grant or refuse to grant, to the owner of the fishing vessel, a licence for using such fishing vessel for fishing in the specified area or specified areas mentioned in such licence.

(4) In granting or refusing licence under sub-section (3), the authorised officer shall have regard to the following, namely:—

(a) whether the fishing vessel is a registered fishing vessel;

(b) the condition of the fishing vessel including the accessories and fishing gear with which it is fitted;

(c) any order that may be made under section 4;

(d) any other matter that may be prescribed.

(5) A licence granted under this section shall be in such form and subject to such conditions, including conditions as to payment of such fees and furnishing such security for the due performance of the conditions, as may be prescribed:

Provided that different fees, and different amounts by way of security, may be prescribed in respect of licences for different classes of fishing vessels.

(6) A licence granted under this section shall be valid for the period specified therein or for such extended period as the authorised officer may think fit to allow in any case.

7. *Prohibition of fishing using fishing vessels which are not licensed.*—No person shall, after the commencement of this Act, carry on fishing in any specified area using a fishing vessel which is not licensed under section 6:

Provided that nothing in this section shall apply to any fishing vessel, which was being used for fishing immediately before the commencement of this Act, for such period as may be specified by the Government by notification in the Gazette.

8. *Cancellation, suspension and amendment of licences.* —(1) If the authorised officer is satisfied, either on a reference made to him in this behalf or otherwise, that—

(a) a licence granted under section 6 has been obtained by misrepresentation as to an essential fact; or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or any order or rule made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the authorised officer may, after giving the holder of the licence a reasonable opportunity of showing cause, cancel or suspend the licence or forfeit the whole or any part of the security, if any, furnished for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf, the authorised officer may also vary or amend a licence granted under section 6.

9. *Registration of vessels* .—(1) The owner of every vessel used or intended to be used for purposes of fishing and kept in the State, not being a fishing vessel registered under section 11 of the Marine Products Export Development Authority Act, 1972 (Central Act 13 of 1972), shall register such vessel under this Act.

(2) Every application for registration of such vessel shall be made by the owner thereof to the authorised officer in such form, and shall be accompanied by such fees, as may be prescribed—

(a) before the expiration of one month from the date on which he first became the owner of such vessel; or

(b) before the expiration of three months from the commencement of this Act,

whichever is later:

Provided that the authorised officer may, for sufficient reason to be recorded in writing, extend the time-limit for registration by such period as he thinks fit.

(3) The authorised officer shall issue to the owner of the vessel registered by him a certificate of registration in the prescribed form and shall enter in a register to be kept by him, in such form as may be prescribed, the particulars of such certificate.

(4) Registration once made shall continue to be in force until it is cancelled by the authorised officer.

(5) Every vessel registered under this section shall carry a registration mark, assigned to it by the authorised officer, displayed in the prescribed manner.

(6) No vessel, other than a registered fishing vessel, shall be entitled to a licence under section 6.

10. *Information to be given to authorised officer about movement of fishing vessels.*—Where a registered fishing vessel moves from the area of one port to the area of another port, the owner of such fishing vessel shall give information to that effect, in the prescribed manner, to the authorised officer by whom such fishing vessel was registered and also to the Port Officer having jurisdiction over the area whereto such fishing vessel has been moved.

11. *Returns to be made by owners of registered fishing vessels.*—(1) Every owner of a registered fishing vessel shall furnish to the authorised officer at the prescribed time and in the prescribed manner such returns as may be prescribed.

(2) The authorised officer may inspect any registered fishing vessel at any time to verify the accuracy of any return made under this section.

12. *Finality of orders under sections 6, 8, and 9.*—Every decision of the authorised officer under section 6, section 8 or section 9, granting or refusing to grant licence for a fishing vessel or cancelling, suspending, varying or amending such licence or registering, or cancelling the registration of, a vessel shall, subject to any right of appeal under section 13, be final.

13. *Appeals against orders refusing grant of licence, etc.*—(1) Any person aggrieved by an order of the authorised officer refusing to grant licence for a fishing vessel or cancelling, suspending, varying or amending such licence or refusing to register a vessel or cancelling the registration of such vessel may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereafter in this section referred to as the appellate authority):

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant a reasonable opportunity of being heard, pass such orders thereon as it deems fit as expeditiously as possible.

(3) Every order passed by the appellate authority under this section shall be final.

Chapter III

Penalties

14. *Power to enter and search fishing vessel.*—The authorised officer may, if he has reason to believe that any fishing vessel is being, or has been, used in contravention of any of the provisions of this Act or of any order or rule made thereunder or any of the conditions of the licence, enter and search such vessel and impound such vessel and seize any fish found in it.

15. *Disposal of seized fish.*—(1) The authorised officer shall keep the fishing vessel impounded under section 14, in such place and in such manner as may be prescribed.

(2) In the absence of suitable facilities for the storage of the fish seized, the authorised officer may, if he is of the opinion that the disposal of such fish is necessary, dispose of such fish and deposit the proceeds thereof in the prescribed manner in the office of the adjudicating officer.

16. *Adjudication.*—(1) Where any authorised officer referred to in section 14 has reason to believe that any fishing vessel is being, or has been, used in contravention of any of the provisions of this Act or any order or rule made thereunder or any of the conditions of the licence, he shall make a report thereof to the adjudicating officer.

(2) The adjudicating officer shall hold an enquiry into the matters mentioned in the report, in the prescribed manner, after giving all the parties concerned a reasonable opportunity of being heard.

17. *Penalty.*—(1) The adjudicating officer shall, after the enquiry under section 16, decide whether any person has used, or caused or allowed to be used, any fishing vessel in contravention of any of the provisions of this Act or of any order or rule made thereunder or any of the conditions of the licence and any such person, on being found guilty by the adjudicating officer, shall be liable to such penalty not exceeding—

(a) five thousand rupees, if the value of the fish involved is one thousand rupees or less;

(b) five times the value of the fish, if the value of the fish involved is more than one thousand rupees; or

(c) five thousand rupees, in any other case, being a case not involving any fish,

as may be adjudged by the adjudicating officer.

(2) In addition to any penalty that may be imposed under sub-section (1), the adjudicating officer may direct that—

(a) the registration certificate of the fishing vessel which has been used, or caused or allowed to be used, in the manner referred to

in sub-section (1) or the licence, any condition of which has been contravened, shall be—

(i) cancelled or revoked, as the case may be; or

(ii) suspended for such period as the adjudicating officer deems fit; or

(b) the fishing vessel or fish that may have been impounded or seized, as the case may be, under section 14 shall be forfeited to the Government:

Provided that no fishing vessel shall be forfeited under clause (b) if the adjudicating officer after hearing the owner of such vessel or any person claiming any right thereto is satisfied that the owner or such person had exercised due care for the prevention of the commission of such offence.

18. *Constitution of Appellate Board and appeal to Appellate Board.*—(1) The Government may, by notification in the Gazette, constitute one or more Appellate Board or Appellate Boards.

(2) The Appellate Board shall consist of three members of whom one shall be a person who is or has been a district judge, who shall be appointed as the Chairman of the Appellate Board.

(3) Where only one Appellate Board is appointed, that Appellate Board shall have jurisdiction throughout the State, and where more than one Appellate Board is appointed, the Government may, by notification in the Gazette, define the jurisdiction of each Appellate Board.

(4) Any person aggrieved by an order of the adjudicating officer may, within thirty days from the date on which the order is made, prefer an appeal to the Appellate Board having jurisdiction to hear such appeal:

Provided that the Appellate Board may entertain any appeal after the expiry of the said period of thirty days, but not after the expiry of sixty days from the date aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) No appeal under this section shall be entertained by the Appellate Board unless the appellant has, at the time of filing the appeal, deposited the amount of penalty payable under the order appealed against:

Provided that, on an application made by the appellant in this behalf, the Appellate Board may, if it is of the opinion that the deposit to be made under this sub-section will cause undue hardship to the appellant, by order in writing dispense with such deposit either unconditionally or subject to such conditions as it may deem fit to impose.

(6) On receipt of an appeal under sub-section (4), the Appellate Board may, after holding such enquiry as it deems fit and after giving the parties concerned a reasonable opportunity of being beard, confirm, modify or set aside the order appealed against and the decision of the Appellate Board shall be final; and—

(a) if the sum deposited by way of penalty under sub-section (5) exceeds the penalty directed to be paid by the Appellate Board, the excess amount, or

(b) if the Appellate Board sets aside the order imposing penalty, the whole of the sum deposited by way of penalty,

shall be refunded to the appellant.

19. *Revision by Appellate Board.*—The Appellate Board may call for and examine the records of any order passed by an adjudicating officer under section 17 and against which no appeal has been preferred under section 18 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of the procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

20. *Powers of adjudicating officer and Appellate Board in relation to holding enquiry under this Act.*—(1) The adjudicating officer and the Appellate Board shall, while holding an enquiry, have all the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) The adjudicating officer or the Appellate Board shall, while exercising any power under this Act, be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

21. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER IV

Miscellaneous

22. *Exemptions.*—(1) Nothing contained in this Act shall apply to survey vessels belonging to the Central Government or any State Government or any public undertaking.

(2) If the Government are of the opinion that, having regard to the purposes of this Act, it would not be in the public interest to apply all or any of the provisions of this Act to any class or classes of fishing vessels used for fishing in any specified area or specified areas, they may, by notification in the Gazette, exempt, subject to such conditions as they may think fit to impose, such class or classes of fishing vessels used for fishing in such specified area or specified areas, as they may specify in the notification, from the operation of all or any of the provisions of this Act.

23. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against the Government or any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Act or any order or rule made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or any officer or authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any order or rule made thereunder.

24. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the matters to which regard shall be had in making an order under sub-section (1) of section 4;

(b) the form of the application for licence under sub-section (1) of section 6, the particulars which it shall contain and the fees which shall accompany it;

(c) the matters to which regard shall be had in granting or refusing a licence under clause (d) of sub-section (4) of section 6, the fees payable for the licence and the security for the due performance of the conditions of the licence;

(d) the procedure to be followed in granting or refusing a licence under section 6 or cancelling, suspending, varying or amending such licence or in registering a vessel under section 9 or cancelling such registration;

(e) the form of the application for registration of a vessel under section 9, the particulars which such application shall contain and the fees which shall accompany the application; the form of the certificate of registration and the form of the register referred to in sub-section (3) of that section, and the manner in which the registration mark referred to in sub-section (5) of that section shall be displayed;

(f) the manner in which the information referred to in section 10 shall be given;

(g) the time and manner in which the returns referred to in sub-section (1) of section 11 shall be furnished;

(h) the authority to whom appeals shall be preferred under sub-section (1) of section 13;

(i) the place and the manner in which an impounded fishing vessel shall be kept under sub-section (1) of section 15 and the manner in which the proceeds of the disposal of the seized fish shall be deposited with the adjudicating officer under sub-section (2) of that section;

(j) the procedure of the enquiry by the adjudicating officer under sub-section (2) of section 16;

(k) the qualifications of the members of the Appellate Board other than the Chairman, the fees and allowances payable to the Chairman and other members of the Appellate Board, and the procedure of the Appellate Board;

(l) the fees payable for the supply of copies of documents or orders or for any other purpose or matter involving the rendering of any service by any officer or authority under this Act;

(m) any other matter which is to be, or may be, provided for by rules under this Act.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. *Repeal and saving.*—(1) The Kerala Marine Fishing Regulation Ordinance, 1980 (12 of 1980), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.